

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

G4S SECURE SOLUTIONS (USA) INC.
f/k/a G4S REGULATED SECURITY SOLUTIONS, INC.
f/k/a THE WACKENHUT CORPORATION

and

Case 12-CA-26644

THOMAS FRAZIER, an individual

Case 12-CA-26811

CECIL MACK, an individual

**RESPONDENT'S ANSWERING BRIEF TO COUNSEL FOR THE GENERAL
COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

Respondent G4S Regulated Security Solutions, a division of G4S Secure Solutions (USA) Inc. ("Respondent") submits the following Answering Brief to Counsel for the General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge ("ALJ").

In his Exception 1, Counsel for the General Counsel ("General Counsel") essentially contends that Cecil Mack's testimony regarding his interim earnings in the first quarter of 2011 should not have been credited by the Administrative Law Judge ("ALJ") because (a) his testimony in this regard was "an approximation" and might not account for facts that might have reduced that number (*e.g.* working fewer hours, using unpaid leave); and (b) his testimony was less credible than information contained in a document that appears to be from the State of Florida, Respondent's Exhibit 1. General Counsel's contentions in this regard lack merit.

First, General Counsel did not elicit any testimony from Mack at the hearing on any such potential issues, nuances or facts that might have lent more clarity or specificity to Mack's testimony about his earnings during the relevant period of time. As such, General Counsel

should not now be permitted to ask the Board to rely on pure speculation regarding an explanation that might have clarified what Mack meant when he testified that he earned approximately \$44,000 per year or details that might have reduced his estimate of interim earnings during the relevant period of time.¹

Second, General Counsel places great reliance on a document that appears to be from the State of Florida's Department of Revenue, Respondent's Exhibit 1. Other than the fact that the Board's Compliance Officer presumably relied upon that document in putting together the Amended Compliance Specification, there was no testimony or other evidence regarding the nature of the document, where it came from, on what information or documents the State of Florida relied upon in creating such a document, etc. As such, and without such foundational evidence, there is no reason to credit such a document over the testimony of the individual whose earnings are at issue.

Finally, General Counsel seeks to introduce new evidence into the record, based on his assertion that the information can be obtained through a "simple internet search." (General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge and Argument in Support of Cross-Exceptions at n.2.) Simple internet search or otherwise, General Counsel has no right to seek to introduce additional evidence in this manner. In this day and age, substantial information can be obtained through a "simple internet search." Presumably, Respondent has no right at this time to supplement the record based on evidence it might be able to obtain through

¹ It should also be noted that Respondent sought to obtain more detailed information and evidence regarding Mack's interim earnings. Specifically, Respondent subpoenaed directly from Mack pay stubs and related information from all interim employers. Unfortunately, Mack provided very little by way of documents in response to that part of the subpoena. And, since Board procedures do not allow for "pre-hearing discovery," Respondent did not know until the morning of the Hearing how little information Mack would provide in this regard.

the internet, perhaps showing additional detail regarding job positions that were open and available during the relevant period of time or that Mack was in school and, therefore, unavailable for work during portions of the relevant period of time. Since Respondent has no such right, General Counsel should not be permitted to introduce new evidence in this way.

Regarding General Counsel's Exception 2, Respondent acknowledges and agrees that the ALJ's calculation incorrectly reduced total net backpay by \$10.00, and should be corrected.

Regarding General Counsel's Exception 3, as to the portion of the Exception that is based on the argument in support of Exception 1, Respondent has the same arguments in response thereto, and which are outlined above.

/s/Fred Seleman

Fred Seleman

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Certificate of Service

On February 14, 2019, the foregoing was filed electronically and a copy served by way of electronic mail on John King, Counsel for the General Counsel, at John.King@nrlrb.com; Thomas Frazier at tomfrazier@gmail.com; and Cecil Mack at cecilmack3@gmail.com.

/s/ Fred Seleman

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G4S Secure Solutions (USA) Inc.